

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**BETTY WEATHERS,**

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**Plaintiff,**

\*

\*

**v.**

**\* CASE NO.: 2:06-cv-0666-WHA**

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**ELI LILLY AND COMPANY, et al.**

\*

\*

**Defendants.**

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**PLAINTIFF'S MOTION TO REMAND**

COMES NOW THE PLAINTIFF, Betty Weathers, by and through her counsel of record, and respectfully request this Court or remand the above cause to the Circuit Court of Elmore County, Alabama. The Defendants have failed to establish that this cause falls under the jurisdiction of the federal courts. Plaintiff brings this Motion pursuant to 28 U.S.C. § 1447, and in further support hereof, state as follows:

1. This Court lacks jurisdiction over this matter, in that the Court could not have had "original" jurisdiction over this matter, had the Plaintiff elected to file the cause in federal court, as required by 28 U.S.C. § 1441.

2. This cause does not present any federal questions which would invoke this Court's jurisdiction over these proceedings, as permitted by 28 U.S.C. § 1331. State law predominates over the issues in this cause.

3. Furthermore, one of the named Defendants shares the same state citizenship as the Plaintiff. Plaintiff and Defendant, Yolanda McCain, are residents of the State of Alabama. As such, complete diversity of citizenship, as mandated by 28 U.S.C. § 1332, is absent.

4. Defendant Lilly's assertion that the Plaintiff has fraudulently joined the in-state, individual Defendant is without merit and is unsupported by the evidence in this cause. Plaintiff in her state court complaint has averred viable claims under Alabama law against all Defendants. All Defendants are properly joined to this action. Defendant Lilly has failed to show that Alabama resident, Yolanda McCain, is fraudulently joined by the Plaintiff for the purpose of defeating federal jurisdiction.

For the reasons stated above and in the accompanying Brief in Support of Motion to Remand, Plaintiff urges the Court to remand this action to the Circuit Court of Elmore County, Alabama.

Respectfully submitted this 31st day of July, 2006.

/s/ FRANK WOODSON

**E. FRANK WOODSON (WOODS479)**  
**Attorney for Plaintiff**

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing document upon the parties as listed below by placing a copy of same in the United States Mail, first class postage prepaid, on this the 31st day of July, 2006.

James C. Barton

Alan D. Mathis

**JOHNSTON BARTON PROCTOR & POWELL LLP**

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/s/ FRANK WOODSON

**OF COUNSEL**